

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADIL HIRAMANNEK, et al.,  
Plaintiffs,

v.

L. MICHAEL CLARK, et al.,  
Defendants.

Case No. 5:13-cv-00228-RMW

**ORDER REGARDING TESTIMONY OF  
DAVID MERRITT**

This court previously ruled that plaintiffs did not disclose the potential testimony of David Merritt in a manner that offered defendant Miller adequate notice. Dkt. No. 692 at 3-4. Merritt's name was buried in plaintiffs' Rule 26 disclosures as one of over 100 names with only a vague description of his testimony, in contrast to Ed Summerfield, who was listed in a supplemental disclosure containing only two names. Plaintiffs claim that Merritt's testimony will be offered solely for impeachment. After hearing the proffered testimony, the court finds that Merritt's testimony is not being offered solely for impeachment but as circumstantial evidence of defendant Miller's alleged discriminatory intent, an element of plaintiffs' claim. Thus, plaintiffs' failure to adequately disclose Merritt's testimony before trial is fatal. Merritt will not be allowed to testify.

**IT IS SO ORDERED.**

Dated: August 4, 2016

  
Ronald M. Whyte  
United States District Judge